

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

) CASE NO: 22-60043-CML  
)  
FREE SPEECH SYSTEMS LLC, ) Houston, Texas  
)  
Debtor. ) Friday, April 28, 2023  
)  
) 10:00 a.m. to 2:19 p.m.  
-----)

TRIAL

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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WITNESSES

DIRECT

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JAMES PATRICK MAGILL

EXHIBITS

RECEIVED

1                   HOUSTON, TEXAS; FRIDAY, APRIL 28, 2023; 10:00 AM

2                                   (Call to Order)

3                   CLERK: All rise.

4                   THE COURT: Okay, good afternoon, everyone. This  
5 is Judge Lopez. Today is April 28. I'm going to call the  
6 one o'clock case, 22-60043. It is the case of Free Speech  
7 Systems here on two matters. One is a continued cash  
8 collateral hearing and one is to approve a compromise under  
9 Bankruptcy Rule 9019.

10                   So why don't I take appearances. I'll start in  
11 the courtroom and then I've muted the entire line. If you  
12 wish to make an appearance after I've taken appearances in  
13 the courtroom, I'll turn online. So if you want to be  
14 recognized for purpose of this hearing, please hit five  
15 star, but I'll start with any appearances in the courtroom.

16                   Mr. Battaglia.

17                   MR. BATTAGLIA: Afternoon, Your Honor. Ray  
18 Battaglia for Free Speech Systems.

19                   THE COURT: Okay.

20                   MR. BATTAGLIA: And Patrick Magill, the chief  
21 restructuring officer in the courtroom.

22                   THE COURT: Okay. Good to see you, Mr. Magill.

23                   MS. DRIVER: Good afternoon, Your Honor. Vicky  
24 Driver with Crow and Dunlevy on behalf of Mr. Jones. With  
25 me on the on the Webex is Mr. Jordan.

1 THE COURT: Thank you.

2 MR. NGUYEN: Good afternoon, Your Honor. Ha  
3 Nguyen for the U.S. Trustee. I also have Jason Ruff here  
4 for the U.S. Trustee as well.

5 THE COURT: Good afternoon to both of you. Mr.  
6 Shannon, good afternoon to you.

7 MR. SHANNON: Good afternoon, Your Honor. R.J.  
8 Shannon for Shannon & Lee LLP.

9 THE COURT: Okay. Good afternoon.

10 MS. FREEMAN: Good afternoon, Your Honor. Liz  
11 Freeman on behalf of Melissa Haselden, the Subchapter V  
12 Trustee. And Ms. Haselden is in the courtroom today.

13 THE COURT: Okay. Good afternoon. Good  
14 afternoon, sir.

15 MR. RIDULFO: I had to show up in person since you  
16 muted me the last time I was on. Your Honor, Mike Ridulfo  
17 for Schwartz Associates. Good to see you.

18 THE COURT: Good afternoon. Okay. Let me --  
19 just give me a second. I'm going to open this up. Let's  
20 see on the line, who do we have?

21 MS. BRAUNER: Good afternoon, Sara -- can you hear  
22 me, Your Honor?

23 THE COURT: Just fine. Good afternoon. Do you  
24 wish to make an appearance, Ms. Brauner?

25 MS. BRAUNER: Can you hear me, Your Honor?

1 THE COURT: Just fine. Good afternoon.

2 MS. BRAUNER: Great. Good afternoon. Sara  
3 Brauner, Akin Gump on behalf of the Committee and with me  
4 are my partners David Zensky and Katherine Porter. Thank  
5 you.

6 THE COURT: Okay. Good afternoon. Good  
7 afternoon, Mr. Zensky. Good to see you, Ms. Porter. Good  
8 afternoon. All right. Anyone else wish to make an  
9 appearance, you can hit five star.

10 It was a 512 number I just --

11 MR. LEMMON: Your Honor, Steve Lemmon for PQPR.

12 THE COURT: Good afternoon, Mr. Lemmon.

13 All right, here's a 718 number.

14 MS. HARDY: Good afternoon, Your Honor. Jennifer  
15 Hardy on behalf of the Texas plaintiffs.

16 THE COURT: Good afternoon, Ms. Hardy. Anyone  
17 else? Got one more.

18 MR. KIMPLER: Good afternoon, Your Honor. It's  
19 Kyle Kimpler from Paul Weiss on behalf of the Connecticut  
20 plaintiffs.

21 THE COURT: Okay. Good --

22 MR. KIMPLER: On with me this afternoon are my co-  
23 counsel, Brian Chapel and Alinor Sterling. And then to the  
24 extent we're going to participate in today's hearing that'll  
25 be handled by my colleague, Mr. Martin Salvucci who you also

1 see on screen.

2 THE COURT: Okay. Good afternoon. Mr. Salvucci,  
3 have you -- let me see, I want to make sure I unmute your  
4 line.

5 MR. SALVUCCI: Thank you, Your Honor. Good  
6 afternoon.

7 THE COURT: Okay. Good afternoon. All righty.  
8 Anyone else?

9 Going up and down a couple of times, Mr. Ridulfo.  
10 I want to make sure I got this right this time. Okay. That  
11 seems to cover everyone, so I'll turn it over to you Mr.  
12 Battaglia.

13 MR. BATTAGLIA: Your Honor, Ray Battaglia for Free  
14 Speech Systems. There are, as you indicated, two matters on  
15 the Court's docket today. There's another notice that I  
16 filed yesterday that the Court may want to explore or  
17 discuss, and I'm happy to do that if there are questions  
18 about it, but as far as the matters on the docket, the 11th  
19 interim cash collateral proposed order was uploaded Docket  
20 No. 571.

21 There are a couple of changes that I'll make the  
22 Court aware of. It's been circulated among the parties.  
23 I've spoken with the U.S. Trustee's Office and answered some  
24 questions and comments from them. The budget did not  
25 include the \$5,000 weekly adequate protection payment to

1 PQPR.

2 Frankly, in light of the Trustee's report, in  
3 light of some pressure from plaintiffs, we decided not to  
4 pay that and think it's warranted but not an issue for  
5 today. Mr. Lemmon has agreed and we have inserted in the  
6 proposed order a requirement the Debtor escrow -- I'm going  
7 to say escrow, I think the order says, reserve -- \$5,000 per  
8 week, subject to further orders of this Court and with  
9 complete reservation of rights of all parties.

10 The Debtor doesn't maintain a separate account, so  
11 this is more or less an accounting reserve and of course,  
12 the cash balances with God's blessing will never ever  
13 approach \$20,000 in a given month. It'll be far in excess  
14 of that. So I think that's a solution that kicks the can  
15 down the road at a minimum.

16 And the only other changes to the order or the  
17 budget, there was a provision in in the prior ten orders  
18 that dealt with the ability to object to the repayment of  
19 PQPR's \$750,000 inventory purchases and a requirement that  
20 notice be given and an opportunity for parties to object.  
21 Inasmuch as that's been repaid and the notice has been sent  
22 more than 30 days ago, there wasn't a need to continue  
23 including that provision in the order.

24 With that, with those exceptions and changing it  
25 from the 11th -- from the 10th to the 11th, the order is the



1 same and the budget is attached and I've received no other  
2 questions, comments, or inquiries.

3 THE COURT: Okay. Let me just open it up. Does  
4 anyone wish to be heard with respect to cash collateral?  
5 Mr. Nguyen?

6 MR. NGUYEN: Yes, Your Honor. Really briefly.  
7 Your Honor, the U.S. Trustee, we do not oppose on this 11th  
8 interim order. Every time I get one of these orders, I have  
9 a conversation with Mr. Battaglia. I think we -- we're on  
10 our number eleventh phone call for ever time this happened.  
11 I have no complaint at all about our line of communication.  
12 However, the U.S. Trustee would note that this is a  
13 Subchapter V case and as we're entering the summer month,  
14 this case will be almost one year old.

15 The Court has and the U.S. Trustee has as well a  
16 mandate from Congress to move these case quickly to their  
17 destination. Within the last couple of months, there has  
18 been very little progress being made due to mediation. At  
19 some point -- and we hope at some point in the near future -  
20 - that the parties will either fish or cut bait on mediation  
21 and tee up issues before the Court to be decided.

22 I'm not asking for the Court to set any deadlines  
23 today. I'm not complaining about anyone causing any delay.  
24 It's just the nature of the case. But we got to move  
25 forward and the duration of the case is just going on far

1 too long for a Subchapter V case and then there's an  
2 administrative burden that comes with it in terms of cost.  
3 So we just want to bring that to Your Honor's attention. I  
4 know you're aware of it.

5 THE COURT: Very much appreciated. No, no --

6 MR. NGUYEN: Thank you, Your Honor.

7 THE COURT: Thank you. Anyone else wish to be  
8 heard with respect to cash collateral?

9 When do you need a hearing again, Mr. Battaglia?

10 MR. BATTAGLIA: Your Honor, we're budgeting  
11 monthly, so sometime before the end of the month of May.

12 THE COURT: Okay. Let me just take a look at my  
13 calendar here. I'm going to share a thought as well before  
14 we kind of go to the next matter. Do you think we could do  
15 Thursday, May 25th, at either 9 a.m. or 2 p.m.? What would  
16 work better?

17 MR. BATTAGLIA: Two is better for me for travel  
18 purposes because after my experience flying today for the  
19 first time, I'll be driving from now on.

20 THE COURT: Okay. What date did I say? May 25th?

21 MR. BATTAGLIA: Yes.

22 THE COURT: Okay. So I guess kind of following up  
23 before we kind of go to the next matter -- I'm going to sign  
24 this order and get it -- it'll get on the docket after we're  
25 done.

1           With respect to the notice that was filed  
2   recently, my case -- I want folks to reach out to my case  
3   manager. I think we just need to have a separate hearing  
4   and I don't want to start giving out dates because my case  
5   manager is going to tell me I got the wrong date or  
6   something, but I want to schedule a couple of hours or maybe  
7   an hour or so or two to go over -- we can take up the notice  
8   just so there's transparency about the notice and also the  
9   Subchapter V Trustee's report.

10           I'd like to hear from the CRO, thoughts about the  
11   report. Let's talk about what's in there and what next  
12   steps are. I think that goes in line and I'd like to do it  
13   sometime in May. You know, next week -- not next week, but  
14   just sometime in the next couple of weeks. Let's just have  
15   a conversation about, you know, the course of the case and  
16   what your thoughts are on it. Give everyone an opportunity  
17   to talk about it. I can share some of mine.

18           Let's just kind of set some time apart. I think  
19   that also falls in line with what the U.S. Trustee has  
20   mentioned, which I share the concern. Let's just kind of  
21   talk about it and so I can talk about next steps in  
22   connection with the case.

23           Since mediation was brought up, is -- are the  
24   parties still mediating or is that still going on or --

25           MR. BATTAGLIA: They are and I'll try to be very

1 cryptic.

2 THE COURT: You don't have to. Why don't we talk  
3 about it at the --

4 MR. BATTAGLIA: That's fine.

5 THE COURT: Why don't we schedule a hearing on  
6 that day, and then everybody can kind of figure out what  
7 they want to say about mediation and where that goes because  
8 I think it all kind of fits in. Right? And maybe we can  
9 all talk about next steps and what we're reading and share  
10 thoughts at that time. Okay?

11 MR. BATTAGLIA: Certainly.

12 THE COURT: But let's just figure a date in the  
13 next couple of weeks. I want to make sure Ms. Haselden is  
14 here and it works and everybody has enough time to kind of  
15 talk about it, just in the Free Speech case. Okay?

16 MR. BATTAGLIA: Yes, sir.

17 THE COURT: Okay. Let me sign this order so that  
18 I know you're -- it's good. It'll hit the docket a little  
19 bit later. Just give me a second. I have signed. Okay,  
20 I've signed that order and it is off to docketing. Okay.

21 MR. BATTAGLIA: Last matter on the Court's docket  
22 is the motion to compromise, the 9019 motion to compromise  
23 the -- basically the disputes with Shannon & Lee and Marc  
24 Schwartz and Associates. Debtor filed the motion and just  
25 so the Court is aware, what I'll present to the Court today

1 will be sort of business judgment testimony or test -- facts  
2 and the argument on the issues that the Trustee's raised and  
3 the Sandy Hook plaintiffs have joined into, I leave that to  
4 the applicants themselves.

5 And, you know, the Court's well aware of the  
6 history that precedes all of these issues. The Court's  
7 denial of the application for retention, the denial of the  
8 motion for reconsideration, that those orders are on appeal.

9 Separately, there are motions for payment of  
10 administrative claims by Shannon & Lee of approximately  
11 \$325,000 and Marc Schwartz and Associates for another  
12 \$348,000, a total of \$673,000. The settlement terms that  
13 are proposed and before the Court today would be to allow  
14 those professionals to simply take their prepetition  
15 retainers, Shannon & Lee a 50,000 and some change, 50,800  
16 some odd dollars. And Marc Schwartz and Associate is  
17 holding a \$75,000 prepetition retainer. And they would, if  
18 the Court authorizes the settlement to go forward, they  
19 would dismiss their appeals and they would dismiss their  
20 administrative claims.

21 The evidence that the Debtor would put on, and I'm  
22 happy to proffer or call Mr. Magill. I don't think it's  
23 necessarily seriously disputed, but is generally speaking  
24 that in the business judgment in the best interests of the  
25 Debtor and its estate, the settlement relieves the Debtor of

1 a potential obligation, no matter how remote -- and I  
2 appreciate that the Court has been pretty specific about its  
3 rulings and I've looked at some of the case law -- but  
4 relieves the Debtor of a potential obligation for another  
5 \$600,000 worth of administrative costs for something that  
6 does not disrupt or alter its cash flow because it's already  
7 paid a deposit retainer.

8 And that's an enormous consideration from the  
9 Debtor's estate, so whether it's a 5 percent risk or a 10  
10 percent risk or greater, it's of a very serious magnitude  
11 that the Debtor will be forced to bear. The parties who --  
12 the Trustee's office, and I appreciate what they're doing  
13 and why they're doing it and the parties who joined in that  
14 appeal, and the Debtor has not, you know, they certainly  
15 have their positions and I know why, but they won't bear  
16 that \$600,000 added expense. The estate will and the estate  
17 will have to power through those issues.

18 There's a distraction element to the estate. As I  
19 said, I'm not a party to the appeal, the Debtor is not, but  
20 that doesn't mean I'm dismissed from having to pay attention  
21 to it and that the Debtor doesn't have to be aware of what's  
22 going on. The other parties who are party to the appeal  
23 aren't bearing cost, as I understand it.

24 So these issues are disputed and whether that  
25 dispute is remote or not, the business judgment that Mr.

1 Magill would testify to is that in his best business  
2 judgment, this is a rational, reasonable settlement in the  
3 best interest of the estate and meets the obligations of the  
4 myriad of case laws on settlements under 9019 in the Fifth  
5 Circuit. And I'll be happy to proffer him. I'll be happy  
6 to call him at the Court's --

7 THE COURT: I would like some -- at least a  
8 proffer or you can put him up, however you wish to proceed  
9 is fine with me. I just want to make sure that --

10 MR. BATTAGLIA: I'll let others open and then I'll  
11 put Mr. Magill on.

12 THE COURT: Huh?

13 MR. BATTAGLIA: I'll let others open and then I'll  
14 put Mr. Magill on.

15 THE COURT: Okay. Thank you.

16 MS. FREEMAN: Judge, just very briefly, we filed -  
17 - Ms. Haselden filed an objection to the request for  
18 administrative expense at Docket No. 269; however, Ms.  
19 Haselden is in support of the 9019. We don't have anything  
20 to add beyond what was filed in that initial response at  
21 269; however, after discussions with Mr. Battaglia and the  
22 CRO, we do understand the benefit to the estate and the  
23 attendant risks to the appeals. Therefore, Ms. Haselden is  
24 in support of the 9019 being approved.

25 THE COURT: Thank you. Is there anyone else who

1 wishes to speak in -- I should say to a form of a brief  
2 opening in support of the motion?

3 MR. SHANNON: Good afternoon again, Judge. R.J.  
4 Shannon for Shannon & Lee. I really think that the -- I  
5 think the main thing to consider about this is that there  
6 isn't any objection to the reasonableness of the settlement,  
7 the economic terms of the settlement, or that it's in the  
8 best interests of the estate. We can talk about some of the  
9 legal issues, I guess, you know, I would say probably after  
10 evidence makes the most sense.

11 But as far as the standards that the Fifth Circuit  
12 set, there's not a dispute that the settlement meets those  
13 standards. I think the questions are about jurisdiction,  
14 whether a settlement can -- whether a Debtor in Possession  
15 or Trustee can settle something where there's a dispute  
16 amongst other parties and whether there's some kind of  
17 competing interest in the Bankruptcy Code to consider.

18 Those were addressed. Shannon & Lee and Schwartz  
19 Associates filed a brief. I think it was on Monday at  
20 Docket No. 562. I think for now, I'll talk a little bit  
21 more about some of the case law if we want to get there. If  
22 you want to hear it now, I'm happy to do it now.

23 THE COURT: Leave it up to you, Counsel.

24 MR. SHANNON: Okay. Yeah, I mean, I think it  
25 makes the most sense to wait until after the evidence.



1 THE COURT: Okay.

2 MR. SHANNON: Because I don't think there is going  
3 to be any competing evidence as far as the standard of  
4 approval.

5 THE COURT: Thank you.

6 MR. RIDULFO: Your Honor, Mike Ridulfo for  
7 Schwartz Associates, LLC. Not much to add. We have joined  
8 in the brief that was filed earlier in the week. We think  
9 the settlement makes sense for all parties. It's been a  
10 very difficult process and we look forward to the Court  
11 approving the resolution.

12 THE COURT: Thank you.

13 MR. RIDULFO: Thank you.

14 THE COURT: Anyone else who wishes to be heard in  
15 support of the motion?

16 MS. DRIVER: Your Honor, Vicky Driver for the  
17 Jones estate (indiscernible) the 100 percent equity owner in  
18 Free Speech Systems, we also agree that this is a well-  
19 supported settlement and would show our support in -- for  
20 approving the settlement.

21 THE COURT: Thank you. Anyone else? Okay. Does  
22 the Trustee wish to make any opening remarks?

23 MR. NGUYEN: Yes, Your Honor. I'll be brief.

24 THE COURT: Okay. Take your time.

25 MR. NGUYEN: Your Honor, we oppose the 9019

1 settlement, partially because it contravenes the Bankruptcy  
2 Code and once evidence is put in and Mr. Shannon makes his  
3 argument, I have some argument as to as to why the Court  
4 shouldn't authorize a settlement that contravenes the  
5 Bankruptcy Code. There's some jurisdictional issues as well  
6 that we'll get into once Mr. Battaglia put on the evidence.

7 THE COURT: Thank you.

8 MR. NGUYEN: Thank you, Your Honor.

9 THE COURT: Anyone else wish to make a form of an  
10 opening in the courtroom? I don't see anyone else. Does  
11 anyone on, maybe on the line wish to make any opening  
12 remarks?

13 MR. SALVUCCI: Good afternoon, Your Honor. Martin  
14 Salvucci of Paul Weiss Rifkind Wharton Garrison on behalf of  
15 the Connecticut plaintiffs, who joined with Texas plaintiffs  
16 that Document No. 559, filed a joinder in support of the  
17 objection. I'll likewise reserve comments until Mr. Nguyen  
18 has presentation, but we also see the jurisdictional  
19 question as not only significant but probably dispositive.

20 THE COURT: Okay.

21 MR. SALVUCCI: Thank you, Your Honor.

22 THE COURT: Thank you. Anyone else?

23 Okay. Mr. Battaglia?

24 MR. BATTAGLIA: Yes, Your Honor. I'll call  
25 Patrick Magill.

1           THE COURT: Okay. Mr. Magill. Come on up. Why  
2     don't you have a seat? Please raise your right hand. Do  
3     you swear to tell the truth, the whole truth, and nothing  
4     but the truth?

5           THE WITNESS: I do.

6           THE COURT: Okay. Let the record reflect that the  
7     witness is duly sworn in. Mr. Magill, you have sat in the  
8     chair a few times, so you know how the mic works and I will  
9     --

10          THE WITNESS: Yes.

11          THE COURT: Okay. Mr. Battaglia, you may proceed.

12                 DIRECT EXAMINATION OF JAMES PATRICK MAGILL

13     BY MR. BATTAGLIA:

14     Q     Would you state your name for the record, please?

15     A     James Patrick Magill, M-A-G-I-L-L.

16     Q     If you can, and it's hard to sometimes, if you'd give  
17     the Court a brief background of your business experience.

18     A     My business experience, I have a undergraduate degree  
19     in accounting. I'm a certified public accountant in the  
20     State of Texas and my business is primarily for the last 40  
21     years, has been accounting and business restructuring, both  
22     in health care and non-healthcare and the last 30 years has  
23     been concentrated in bankruptcy and turnarounds.

24     Q     And have you had opportunities to serve in the capacity  
25     of a chief restructuring officer or a trustee in the past?

1 A Yes, many times.

2 Q When did your involvement in the Free Speech Systems  
3 case commence?

4 A October of 2022?

5 Q And what role do you serve?

6 A CRO, chief restructuring officer.

7 Q Do you have a familiarity in that role with the  
8 disputes that are before the Court and being settled by this  
9 motion?

10 A I am.

11 Q Can you tell the Court in your own words, please, why  
12 you think this is a good settlement for the estate?

13 A Well, I believe that the -- however remote, the  
14 potential liability that we might have in both monitoring  
15 any kind of further litigation in this matter plus the  
16 possibility that we might be saddled with some kind of  
17 settlement down the road concerns me. We are constantly  
18 trying to monitor administrative claims and also want to  
19 make sure that we can kind of control how this is going,  
20 this whole process is going to end without hanging out  
21 there.

22 That has some concern. The particular attraction to me  
23 on this is that we can settle it without the estate writing  
24 another check. And as long as we can settle this, that does  
25 not affect our cashflow and it eliminates, however remote

1 somebody might think it is, any kind of future liability.

2 It seems like that's in our best interest.

3 MR. BATTAGLIA: Thank you. I have no further  
4 questions of the witness.

5 THE COURT: Okay. Does anyone wish to question  
6 the witness who supports the motion? Okay. Any questions  
7 for any party who opposes the motion? And I'll start in the  
8 courtroom.

9 MR. NGUYEN: No, Your Honor. Thank you.

10 THE COURT: Okay, thank you. Mr. Salvucci, do you  
11 have any questions for the witness?

12 MR. SALVUCCI: No questions, Your Honor. Thank  
13 you.

14 THE COURT: Mr. Magill, thank you very much for  
15 your time.

16 MR. BATTAGLIA: Your Honor, I would ask that the  
17 Court take judicial notice of the administrative expense  
18 motions at ECFs 251 and 252. Those are the administrative  
19 expense motions filed by Shannon & Lee and by Marc Schwartz  
20 and Associates which have drawn objections and remain  
21 pending at this point in time.

22 THE COURT: Okay. I'll take judicial notice that  
23 they were filed, yes, and that there are objections filed to  
24 them and they remain pending.

25 MR. BATTAGLIA: I have no further evidence. I

1 don't know if anybody has any.

2 THE COURT: Okay. Any further evidence in support  
3 of the relief requested?

4 MR. SHANNON: Yes, Judge. Shannon & Lee filed a  
5 witness and exhibit list at Docket No. 567. Virtually  
6 everything, Exhibits 1 through 23 I believe, you know, are  
7 things that would be appropriate for judicial notice. The -  
8 - Exhibit 1 is just the motion we're here on for today. Two  
9 is the exhibit -- Exhibit 2, I'm sorry, is the U.S.  
10 Trustee's objection. Three is the joinder. Four is the  
11 Shannon & Lee's motion to allow the administrative expense  
12 claim. Five is Schwartz Associates' administrative expense  
13 motion. Six is the U.S. Trustee's objection. Seven is Alex  
14 Jones' objection. Eight is the Debtor and the Subchapter V  
15 Trustee's joint objection. Nine is Shannon & Lee's omnibus  
16 reply to those objections.

17 THE COURT: Got it. Which -- out of all the -- 1  
18 through 24, are you seeking to -- what are you -- what are  
19 you --

20 MR. SHANNON: I would like the Court just to take  
21 judicial notice of that, you know, again that the -- those  
22 are the pleadings. Those are the pleadings that reference  
23 the --

24 THE COURT: Want me to take judicial notice of 1  
25 through 24?

1 MR. SHANNON: One through twenty-three, I believe.

2 THE COURT: Okay.

3 MR. SHANNON: And the one thing to note, I think  
4 it's Exhibit 9 -- I'm sorry. Not Exhibit 9. Exhibit 13, 16,  
5 19, and 22 are orders by the District Court and the appeals.  
6 I still think the Court can take judicial notice there. You  
7 know, they --

8 THE COURT: Publicly filed claims. I can take  
9 judicial notice.

10 MR. SHANNON: Yeah, and they're signed by the  
11 District Court, so they're -- I think that's another basis.  
12 Exhibit 24, I don't know if it's going to be an issue. I  
13 haven't heard anything in the arguments that it would be,  
14 but you know, I know that in the U.S. Trustee's objection, I  
15 think there was either an implication or I believe a  
16 statement that there weren't any discussions with the Sandy  
17 Hook plaintiffs. This just wasn't -- that just wasn't true,  
18 so I do believe that can also be admitted. I think it's a -  
19 - you know, the --

20 THE COURT: Why don't I just take notice of 1  
21 through 23, judicial notice, and we'll save 24  
22 (indiscernible).

23 MR. SHANNON: Okay.

24 THE COURT: Okay. Thank you. Anything else from  
25 parties in support?

1                   Okay. Let me -- Mr. Battaglia, Mr. Shannon, Mr.  
2   Ridulfo, is it fair to say that your side has rested on the  
3   evidence?

4                   MR. BATTAGLIA: Debtor rests. Yes, Your Honor.

5                   THE COURT: Okay, thank you. Okay, for those who  
6   opposed, Mr. Nguyen, any evidence to present?

7                   MR. NGUYEN: No evidence, Your Honor.

8                   THE COURT: Okay. Mr. Salvucci, any evidence to  
9   present?

10                  MR. SALVUCCI: No evidence, Your Honor, just  
11   argument. Thank you.

12                  THE COURT: Okay. Is it fair to say that your  
13   side, in terms of evidence, there's no evidence presented,  
14   fair to say that that side has rested as well? Okay, so I'm  
15   going to close the evidentiary record and we'll proceed to  
16   any closing arguments.

17                  I'll start with the Debtor's side, Debtor, Mr.  
18   Ridulfo, Mr. Shannon, whoever wants to go first is fine.  
19   Any statements -- or Ms. Freeman, just, if there's anything  
20   you should tell me.

21                  MR. BATTAGLIA: The only thing I do want to add,  
22   Judge, just regarding jurisdictional issues is of course,  
23   the administrative expense claims are still pending before  
24   the Court with objections. They are not on appeal at this  
25   time. And I think that it strikes me as odd that a Debtor



1 doesn't have the ability to settle a claim against it that's  
2 pending and that seems to be the crux of part of the  
3 arguments that the opponents are making and that's really  
4 the only argument I have.

5 THE COURT: Thank you.

6 MR. SHANNON: Judge, R.J. Shannon again for the  
7 record. I think, you know, again, the evidence just  
8 supports the fact that there is no dispute that the  
9 settlement meets the standards under -- for approval of a  
10 settlement under 9019 under the Fifth Circuit law. I just  
11 point out also that there's not any dispute about the  
12 alleged facts in the motion. There's no dispute about, for  
13 example, Paragraph 14 of the motion that there were  
14 negotiations involving the Debtor, the Subchapter V Trustee,  
15 Shannon & Lee, and Schwartz Associates to get to the  
16 settlement that's being proposed today.

17 There's no dispute about the terms of the  
18 settlement or what it does in Paragraph 14 of the motion.  
19 Paragraph 15 of the motion, there's no dispute that the  
20 Debtor's CRO Patrick Magill evaluated the settlement,  
21 determined it's the best -- in the best interest of the  
22 Debtor's estate. I think that that's the evidence you've  
23 heard today.

24 Paragraph 23 of the motion again, not disputed  
25 that the settlement reflects, you know, 18.7 percent of the

1 amount in the administrative expense motions. Maybe put  
2 another way, 81.3 percent discount. There's no dispute  
3 about Paragraph 24 of the motion that continuing the  
4 litigation would result in expense to the Debtor's estate.  
5 I believe that it's also something that you heard today from  
6 Mr. Magill's testimony.

7 Paragraph 25 of the motion, again, not disputed,  
8 that the matter is -- it's not -- it's unlikely to be  
9 resolved quickly. Again, not disputed. Paragraph 26 not  
10 disputed. "Due to the uncertainties involved, the expense  
11 of continuing the litigation, and the delay and the  
12 inconvenience of continuing the litigation, the settlement  
13 is in the best interests of the Debtor's creditors."

14 And lastly, there's no dispute about paragraph 27  
15 of the motion, that the settlement was negotiated at arm's  
16 length among the Debtor, the Subchapter V Trustee, Shannon &  
17 Lee, and Schwartz Associates. I also think, Judge, the  
18 things that we -- you can take judicial notice of, the  
19 exhibits that I asked the Court to take judicial notice of,  
20 you know, what are the disputed issues and contentions of  
21 the parties?

22 I think the Shannon & Lee Exhibits 4 through 22 at  
23 ECF 567 outline what those disputes are and that they are  
24 disputed issues, real disputed issues. I think you can take  
25 judicial notice as -- looking at those documents with

1 respect to the administrative expense motions, no one's come  
2 in and argued that the Court cannot or should not  
3 retroactively approve the employment on a limited basis  
4 requested and that hasn't been asserted so far.

5           You can also see from those documents that there's  
6 no opposition from any creditors to the amount of the  
7 administrative expense motions as reduced in those  
8 administrative expense motions, the 600,000-plus dollars.  
9 The settlement's obviously better than that, but there was  
10 no opposition to that higher amount by any creditors.

11           And lastly, Judge, I think you can take judicial  
12 notice that the Subchapter V Trustee has looked into the  
13 issue. Point out Shannon & Lee Exhibit 23. That was the  
14 Subchapter V Trustee's report. It's a 29 page single spaced  
15 report that really delves in deep and the Trustee -- the  
16 Subchapter V Trustee doesn't have an objection to the  
17 settlement, supports the settlement. And she's the person  
18 that's looked into it the most. I think that that is  
19 something that the Court should take into consideration.

20           I think there are other things that the Court can  
21 take judicial notice, but I'll leave it there for now. But  
22 I think it's pretty clear that both based on the lack of any  
23 kind of opposition, the lack of any dispute as to those  
24 factual allegations in the motion and the evidence you heard  
25 today that the settlement meets the standards for approval

1 of a settlement and compromise under the Fifth Circuit law.

2 But turning to the things that are actually at  
3 issue, and I do think these are -- you know, that really is  
4 not at issue. It's the points raised by the U.S. Trustee's  
5 objection and the first one is jurisdiction. You've heard  
6 that being talked about. It's dealt with pretty -- in my  
7 mind, extensively in the brief that we filed, but I think  
8 the -- you can just take one thing or two things out of it.  
9 I'll quote the Tenth Circuit Bankruptcy Appellate Panel, In  
10 re: South Medical Arts Companies, Inc. That's 343 B.R.  
11 250.

12 That Bankruptcy Appellate Panel said, "A  
13 bankruptcy court loses jurisdiction only over those aspects  
14 of the case involved in an appeal. Here, the summary  
15 judgment appeal is distinct and separate from the issue of  
16 whether a compromise may be reached. Because the compromise  
17 is a separate aspect of the case, the bankruptcy court has  
18 jurisdiction to rule on the compromise."

19 That's reflected in some Fifth Circuit precedent  
20 as well. In re: Life Partners, Inc., 708 F.App'x 831 (5th  
21 Cir. 2017). The Fifth Circuit dismissed a pending appeal  
22 because there was no longer a case in -- case or controversy  
23 when there was a settlement of the underlying dispute  
24 approved by the bankruptcy court that resolved the  
25 underlying issue. I haven't seen any case law that says a -

1 - something that's on appeal can't be settled. I don't  
2 think there is that case law.

3 And I also just point out, Judge, that the --  
4 approving the settlement doesn't require the Court to do  
5 anything at all with respect to the appeal or even with  
6 respect to the administrative expense motion. No one's --  
7 the Debtor is not coming in here and asking you, the  
8 settlement would not require you to do -- you know, to say  
9 that the appeal is dismissed. That's not what the  
10 settlement's asking.

11 The settlement says that Shannon & Lee and  
12 Schwartz Associates will take the actions to dismiss the  
13 appeals. There's no cross appeal here. It's just Shannon &  
14 Lee and Schwartz Associates that are pursuing their appeals.  
15 So I just don't see the jurisdictional issue. I also point  
16 out that the District Court did enlarge the time to file  
17 briefs in that case because of the settlement and those are  
18 -- you can see those in Shannon & Lee Exhibits 13, 16, 19,  
19 and 22.

20 So it's not something that the District Court said  
21 no, the settlement doesn't matter. And again, Judge, I just  
22 think if that was the case, if the position, if it was true  
23 that a -- something, a collateral issue to an appeal could  
24 never be determined, then there can never be a settlement of  
25 an appeal in a bankruptcy case because this isn't even an --

1     you know, a settlement of the of the actual appeal. This is  
2     a collateral issue at most. So again, I think the  
3     jurisdiction, there's definitely jurisdiction for you to  
4     approve the settlement.

5             The second argument that the U.S. Trustee brings  
6     up is about the scope of Bankruptcy Rule 9019, right, and  
7     essentially, whether a Debtor in Possession or a Trustee can  
8     settle something even when there are other objecting  
9     parties. You know, just as a general matter, I think using  
10    estate property to compromise disputed claims is clearly  
11    within the scope of Bankruptcy Rule 9019 and Bankruptcy Code  
12    Section 363.

13            I'll point the Court out to the case In re: DVR,  
14    LLC, 582 B.R. 506 (Bankr. D. Colo. 2018). It analyzed that  
15    issue and what it held was that yes, a Debtor in Possession  
16    or Trustee can settle objections raised by other parties  
17    where it concerns the bankruptcy estate or administration of  
18    the bankruptcy case rather than the private rights of non-  
19    settling parties.

20            And that Court describes why. It says, you know,  
21    one, the settlement power is "an important arrow in the  
22    Trustee's quiver." Two, it provides a mechanism "to put an  
23    end to litigation that would otherwise drain the estate's  
24    resources or delay distributions to creditors." And three,  
25    it's part of a system that Congress put into place to

1 balance the broad standing rights that parties have in  
2 bankruptcy. It's part of that system.

3           Again, this is something you can see in Fifth  
4 Circuit precedent in the case *In re: Age Refining, Inc.*,  
5 801 F.3d 530 (5th Cir. 2015). It was actually cited in the  
6 Debtor's motion. And in that case, a bankruptcy court  
7 approved a settlement with respect to an asserted secured  
8 claim, you know, over the Committee's objection, and B,  
9 while the Committee was prosecuting a motion to value the  
10 collateral and an objection to the claim. The Fifth Circuit  
11 affirmed the bankruptcy court's ruling and said that  
12 settlement was appropriate.

13           The last thing, the last of argument that, the  
14 U.S. Trustee's objection that has been joined said was that,  
15 well, look, it -- the approval is somewhat contravened in  
16 the Bankruptcy Code. And Judge, I just disagree with that.  
17 I mean, it's a straightforward application of Section 363  
18 and Bankruptcy Rule 9019. I think really what the U.S.  
19 Trustee's objection says is it really wants to make an  
20 exception, an ad hoc exception to that.

21           Point the Court to the case *In re: Stearns*  
22 *Holdings, LLC*, 607 B.R. 781 (Bankr. S.D.N.Y. 2019). That  
23 Court said, "Where consideration is paid pursuant to a  
24 settlement, the Court need not review such payment under  
25 Section 503(b) of the Bankruptcy Code." And what that --

1 what Stearns Holdings did was it just applied the standard  
2 for approval of a settlement. It's a well-established  
3 standard. You look at the uncertainties present, the costs  
4 of litigation, the interference of litigation, the views of  
5 creditors, whether it was negotiated at arm's length, and  
6 determine whether the settlement is fair and equitable and  
7 should be approved.

8 Look, I do think there could be potentially an  
9 issue. It hasn't been raised here but it, it could be an  
10 issue of, hey, is, is this actually a settlement. I haven't  
11 heard an assertion that it's not, but I do think that could  
12 be -- that could be a question that's raised. And I think  
13 the Lehman case that was cited in the U.S. Trustee's  
14 objection shows what that -- you know, what something that  
15 is couched as a settlement is actually not a settlement,  
16 despite how it's how it's been formally presented.

17 In the Lehman case the, you know, "settlement"  
18 provided that the Committee members' expenses would be paid  
19 in full without showing substantial contribution. That  
20 happened beforehand. There wasn't a dispute about  
21 something, about whether something constitutes substantial  
22 contribution, and then a settlement at some discount. It  
23 just said, look, this provision of Bankruptcy Code just  
24 doesn't apply to allow that administrative expense claim in  
25 full.



1           Judge, I agree that the Debtor couldn't come in  
2     here and get approval of a settlement that proposed to allow  
3     the amount in the administrative expense motions in full  
4     over an objection, but that's not what's happening. The  
5     settlement would be, you know, 18.7 percent of what is  
6     asserted. I think a settlement is a tool to manage risk of  
7     litigation, to manage the cost of litigation, and that's  
8     something you see reflected in the standards of approval of  
9     a settlement.

10           And that's what this -- that's what this is here.  
11     I think it's clearly a settlement. It's not a number that  
12     would have been agreed to absent the uncertainties of the  
13     litigation, the cost of litigation. It's not quibbling  
14     around the edges and as you heard Mr. Magill talk about, you  
15     know, it's anchored to an amount that the Debtor would --  
16     that would not interfere with the Debtor's cash flow.

17           The last case I want to talk about, Judge, is the  
18     Roquemore case referenced in the U.S. Trustee's objection in  
19     the Sandy Hook plaintiffs' joinder. The case was cited and  
20     I actually think it kind of -- it shows or it supports the  
21     Debtor's motion. It shows how competing policies of the  
22     Bankruptcy Code are addressed in the context of a  
23     settlement.

24           That case involves a Section 727 objection to  
25     discharge and what the Bankruptcy Court did was actually

1 analyze it under the standards for Bankruptcy Rule 9019, but  
2 said look, because of these competing standards, you're  
3 going to look at it with a little bit of heightened  
4 scrutiny. And the Court really talked about how important,  
5 you know, objections to discharge are and the very important  
6 policy implications there.

7 But still, you know, it actually applied the  
8 standard to approval of a settlement and compromise under  
9 Bankruptcy Rule 9019. I think Roquemore supports that the  
10 competing policy considerations are something the Court can  
11 think about. It's something that the Court can think about  
12 with respect to a, you know, whether a settlement is fair  
13 and reasonable.

14 You could even say it's a thumb on the scale, but  
15 here, there is no -- there is no dispute that they -- that  
16 the standard is met and that the settlement especially the  
17 economic terms of the settlement are reasonable.

18 So Judge, that's what I have. I think based on  
19 that, based on the evidence you've heard, the Court should  
20 approve the settlement. I don't think the Bankruptcy Code  
21 requires the Debtor to make an unsound gamble in litigation  
22 where it has reached a settlement that's fair and equitable  
23 in the best interest of the bankruptcy estate and was  
24 negotiated at arm's length.

25 THE COURT: Thank you very much.

1 MR. SHANNON: Thank you, Judge.

2 MR. RIDULFO: Again, Your Honor, Mike Ridulfo for  
3 Schwartz Associates. Your Honor, we join in the arguments  
4 made by Mr. Shannon. It just strikes me and I think this is  
5 the overlay here. This is exactly what Rule 9019 is  
6 intended to be used for. The Debtor routinely compromises  
7 claims, negotiates administrative claims, files claim  
8 objections. We think this is specifically in the province  
9 of the Debtor's business judgment and we ask the Court to  
10 grant the motion.

11 THE COURT: Thank you very much. Anyone else wish  
12 to be heard in support of the motion?

13 Okay. Let me turn to the Trustee. Any comments?

14 MR. NGUYEN: Thank you, Your Honor. Ha Nguyen for  
15 the U.S. Trustee. Your Honor, I will be brief. We said a  
16 lot in our papers. The U.S. Trustee filed an objection to  
17 the motion which succinctly laid out the issues that my  
18 office has with this type of proposed settlement. While the  
19 Court -- and we don't normally stand in the way -- should be  
20 encouraged -- encouraging parties to resolve issues and come  
21 to consensus. However, there are limitations on what the  
22 Court can and cannot approve and the settlement that the  
23 parties are asking the Court to approve today is one of  
24 those -- is one that the Court cannot approve because it  
25 contravenes the Bankruptcy Code.

1           This is not a matter about dollars and cents.

2       That would be easy. That would be an easy call. This is  
3       about whether parties can negotiate around the strict  
4       requirements for employment and compensation under the  
5       Bankruptcy Code and your own orders on September 20th. In  
6       essence, the parties are rewriting what is required under  
7       the law.

8           I heard the term ad hoc exception. Complying with  
9       the law is not an ad hoc exception. It's the requirement.  
10      When it comes to employment and compensation, all parties  
11      have the right to be heard, not just the Subchapter V  
12      Trustee, not just the Debtor, but also creditors and the  
13      U.S. Trustee and the Court has its own obligation, which is  
14      clearly laid out in the Supreme Court Espinoza case, which  
15      says that the Court is obliged to ensure compliance with the  
16      Bankruptcy Code on its own initiative, even if no creditors  
17      object.

18           The Court's responsibilities, the parties' rights  
19      to object and oppose under 327 and 330 and other provisions  
20      of the Bankruptcy Code cannot be bargained away through a  
21      9019 settlement. This request is not just about retainers,  
22      Your Honor. This is about compliance with bedrock  
23      principles of the Bankruptcy Code. I would urge the Court  
24      to consider the importance of this decision as it applies to  
25      all cases going forward.

1           Why would any professional go through showing that  
2   they are disinterested and they qualify under 327? Why  
3   would any professional submit any disclosure of connections  
4   to the Court or make a showing that their fees are  
5   reasonable, filing fee application? Why would any  
6   professional do any of this if they can do a handshake  
7   agreement with the Debtor under a 9019 settlement? Further,  
8   Your Honor, if you think about it, these examples, you know,  
9   the code doesn't allow -- doesn't authorize conflict the  
10   counsel to represent the Debtor.

11           If Your Honor allow payments under Rule 9019 can  
12   conflict the counsel backchannel their way into payment by  
13   providing services to the Debtor without an application and  
14   then filing another handshake 9019 motion with the Court;  
15   when you think about these examples, this is the precise  
16   reason why the Court should deny this attempt to circumvent  
17   the well-controlled process of employment and compensation  
18   that Congress implemented in Section 327, 328, 330, and so  
19   forth. And again, it's important.

20           Rule 9019 is a very general provision and there  
21   are rules of statutory construction that says the -- you  
22   know, the -- I'm sorry, I'm -- specific rules governs over  
23   the general rule. And rule -- and again, Rule 9019 is just  
24   a rule. It cannot be used to undermine substantive  
25   provisions of the Bankruptcy Code such as Section 327 and

1 330. Those sections are in the code. Rule 9019 is just a  
2 rule implemented by the judicial conference.

3 And I think another important point that I think  
4 get lost in all of this is the U.S. Trustee objects to this  
5 settlement for the purposes of effectuating your order on  
6 September 20th, your order denying S&L and Schwartz's  
7 application. The Court listened to hours of testimony and  
8 looked at evidence and thoroughly explained its reasoning on  
9 the bench and told everybody why these applications should  
10 be denied.

11 The impact of that decision, if we read *Lamie v.*  
12 *U.S. Trustee*, is that unretained professionals do not have  
13 the right to compensation from the bankruptcy estate. And I  
14 will quote from the Supreme Court. And it says, "A debtor  
15 attorney not engaged as provided by Section 327 is simply  
16 not included within the class of person eligible for  
17 compensation."

18 This is the effect of your September 20th orders.  
19 Now what S&L and Schwartz and the Debtor through this 9019  
20 motion is saying is, you know, ignore what the Court said on  
21 September 20th and also the Bankruptcy Code and simply just  
22 look at Rule 9019 and allow us to be compensated by the  
23 bankruptcy estate.

24 Your Honor, your orders on September 20th mean  
25 something and they have implications and they have legal

1 ramifications. S&L and Schwartz are entitled to go up to  
2 District Court and say, hey, we think Judge Lopez is wrong.  
3 They have that right to appeal and they did. And the U.S.  
4 Trustee will be there and we will say Judge Lopez was well  
5 reasoned and he got it right. That is the process, not in  
6 Rule 9019 settlement for the Debtor where none of the  
7 respondents to the appeal is involved. Simply, this is a  
8 back channel way to ignore your orders and the ramification  
9 of your ruling on September 20th, to allow them to receive  
10 payment from the bankruptcy estate.

11 Lastly, Your Honor, we mentioned jurisdiction in  
12 our order. S&L and Schwartz in its -- in their brief stated  
13 that the Court is not exercising any jurisdiction over the  
14 appeal, but I have never seen the argument where it is not  
15 an exercise of jurisdiction when the Bankruptcy Court is  
16 ordering the appellant to dismiss their appeal. And also  
17 the reason why they're up there in District Court is to undo  
18 your ruling on their Section 327 application, which is the  
19 right to be -- to receive compensation from the estate.

20 They're saying, forget about the merits and the  
21 arguments up there. They're saying just allow us to have  
22 that right now through this 9019 motion. So that's why I  
23 believe the jurisdiction question is very dispositive  
24 because it gives them exactly what they want without taking  
25 it up to the District Court.

1           Your Honor, we stand by what we wrote in our  
2     objection on jurisdiction and believe that the caselaw that  
3     we cited supports the notion that once an appeal is filed,  
4     the District Court has jurisdiction on the matter. Unless  
5     the Court has any question, the U.S. Trustee requests that  
6     the 9019 motion be denied.

7           THE COURT: Thank you very much.

8           MR. NGUYEN: Thank you, Your Honor.

9           THE COURT: Okay. Mr. Salvucci.

10          MR. SALVUCCI: Thank you, Your Honor, and may it  
11     please the Court, once again Martin J. Salvucci of Paul  
12     Weiss Rifkind Wharton and Garrison on behalf of the  
13     Connecticut plaintiffs. We're of the view that the United  
14     States Trustee has this pretty much exactly right and I  
15     don't want to belabor energetic agreement, particularly  
16     because I think I'm on the last one in line here.

17          I did just want to emphasize that I think the  
18     objection raises several arguments, any one of which  
19     standing on its own could offer a sufficient basis and  
20     should offer sufficient basis for the Court to deny the  
21     motion.

22          In our view, this is a threshold question of  
23     jurisdiction. Of course, the Court has an independent  
24     obligation to police its own subject matter jurisdiction.  
25     The United States Court of Appeals for the Fifth Circuit has



1 -- quoting the Supreme Court, "observes that the filing of a  
2 notice of appeal is an event of jurisdictional  
3 significance." That language which comes from the Griggs  
4 case also makes clear that divestiture is to those aspects  
5 of the case that are involved in the appeal.

6 While it's true and I don't think anyone said this  
7 directly, but while it's true that there is more flexibility  
8 or functional inquiry to the divestiture doctrine in  
9 bankruptcy, it's not so flexible or so functional as to  
10 allow a Court to revisit, comment upon, or supplement an  
11 earlier order that's already on appeal. I think that's very  
12 helpful language from another bankruptcy appeal in the  
13 Northern District of Texas, Judge Fitzwater in the Axys  
14 Capital Management case, reiterating exactly that point.

15 And the issue is that the proposed settlement  
16 takes square aim at the two orders that are now on appeal.  
17 It would be a triumph of form over substance to say that  
18 simply because the Court is not formally speaking, acting on  
19 those orders itself, it's not taking square aim at the  
20 subject matter of those orders.

21 Moreover, Your Honor, even if there were  
22 jurisdiction in this case, the proposed settlement aims to  
23 effect, as Mr. Nguyen I think ably elaborated on, end run  
24 around the heightened requirements the Bankruptcy Code does  
25 set forth with retention, compensation of estate

1 professionals. It's no accident, Your Honor, that Congress  
2 devoted extensive red ink in the Bankruptcy Code to the  
3 mechanics for these sorts of efforts and Rule 9019, a much  
4 more general non-substantive provision, should not operate a  
5 as effectively a side door around those around those  
6 requirements.

7           We think the Roquemore case is actually quite  
8 helpful for us in part because it acknowledges there are  
9 certain topics in the case of in the -- in the case of  
10 Roquemore, it was a discharge objection. There are certain  
11 topics that are not really properly the province of a 9019  
12 motion. I acknowledge that certain Courts say that  
13 expressly about discharge objections and we think here would  
14 make very little sense for the statutory requirements in  
15 Section 327 (indiscernible) to effectively be undone by a  
16 9019 motion.

17           The last thing that I say, and this is not  
18 strictly speaking a legal point, Your Honor, is that we are,  
19 as the Sandy Hook families collectively probably on the  
20 order of 99 percent of unsecured creditors because so much  
21 has been said about the risk posed by the administrative  
22 expense motions, it does just bear mentioning that it is the  
23 unsecured creditors who are going to be bearing the risk  
24 that those motions are granted.

25           We've assessed those risks and my clients are

1 comfortable with those risks, Your Honor. I think  
2 (indiscernible) said in the context of its 9019 inquiry,  
3 that there is some proper deference owed to the reasonable  
4 views of creditors. I think that was the Foster Mortgage  
5 case. And so to the extent helpful and probative, I would  
6 just like to point out once again that 99 percent of the  
7 unsecured creditors do oppose the settlement,  
8 notwithstanding the legal issues.

9 With that, unless Your Honor has any further  
10 questions for me, Sandy Hook families likewise, respectfully  
11 submit that the motion be denied, and the objection  
12 sustained.

13 THE COURT: Thank you very much. Does anyone else  
14 wish to be heard?

15 MR. SHANNON: Judge, if I could respond just  
16 briefly.

17 THE COURT: I've heard enough. I am going through  
18 the line, because last time Mr. Ridulfo, I didn't recognize  
19 him and now it's on my mind to do the double and the triple  
20 check on this.

21 Does anyone on the line wish to be heard?

22 Okay. So before the Court is to approve a  
23 compromise under 9019, settling claims involving Shannon &  
24 Lee and Schwartz and Associates, which I'll call  
25 (indiscernible) for purposes of this decision.

1 I want to just, first of all, thank every person  
2 who participated in the briefing and in the hearing. I  
3 think it's important. It's part of the process. I think  
4 you will note today anyone who wanted to speak, I let speak.  
5 I think today is an important hearing and so I'm -- anybody  
6 who was interested in speaking either in support or against  
7 it, certainly was afforded the opportunity. I'm going to  
8 find that there's been due and proper notice of today's  
9 hearing and service of the motion.

10 The Court has jurisdiction over this matter over  
11 28 U.S.C. 1334. This is a Court proceeding under 28 U.S.C.  
12 157 to consider the 9019 motion. So I'd note when this case  
13 started, Mark Schwartz served as the Debtor's proposed chief  
14 restructuring officer and his firm provided proposed  
15 financial services to the Debtor and did so into this case,  
16 and Shannon & Lee served as co-counsel along with Mr. Ray  
17 Battaglia.

18 The Court denied the Schwartz and Associates and  
19 Shannon & Lee retention applications for the reasons stated  
20 on the record. I also denied motions to reconsider those  
21 applications. Schwartz and Associates and Shannon & Lee  
22 have appealed the orders, denying their retention  
23 applications and the motion to reconsider. Those appeals  
24 are pending before the U.S. District Court for the southern  
25 district of Texas. Aside from the retention applications

1 and the appeals, Shannon & Lee and Schwartz and Associates -  
2 - I guess I won't refer to them as (indiscernible). I'll  
3 just keep using Schwartz and Associates -- also filed  
4 motions for the allowance of administrative expense claims  
5 in October of 2022. Those motions seek about 675,000 in  
6 collective fees for work performed for the Debtor after the  
7 petition date. There have been numerous parties who have  
8 objected to those and those issues remain pending and they  
9 are not on appeal. They still remain pending in front of  
10 this Court.

11 Court was asked to approve a compromise in a  
12 settlement between the Debtor and Schwartz and Associates  
13 and Shannon & Lee. Under the settlement, Shannon & Lee  
14 would keep a prepetition retainer of about \$50,000 and  
15 Schwartz and Associates would keep a prepetition retainer of  
16 about 75,000. For Shannon & Lee, this amounts to about 15  
17 percent of the admin claim requested and for Schwartz and  
18 Associates, it's about 20 percent of the admin claim  
19 requested.

20 Upon entry of a final non-appealable order,  
21 Shannon & Lee and Schwartz and Associates have indicated  
22 that they would cause the appeals and the admin motions to  
23 be dismissed or withdrawn. The Subchapter V Trustee object  
24 -- filed an objection to the admin expense motion but was  
25 involved in and now supports the proposed settlement before

1 the Court and supports entry of an order approving it.

2 U.S. Trustee objects to the settlement and so do  
3 Sandy Hook plaintiffs. The Connecticut families filed a  
4 joinder supporting the UST's objection. UST argues that --  
5 and the families, argues that the motion should be denied.  
6 First, they believe the Court has no jurisdiction to approve  
7 the settlement because it pertains to matters subject to the  
8 appeal.

9 Second, it exceeds the scope of a 9019 motion  
10 because it's the Court and not the Debtor who has to prove  
11 professional employment and compensation applications in a  
12 bankruptcy case, and for that reason, Chapter 11 Debtor  
13 can't, according to these parties, bargain away a right of  
14 other parties including the U.S. Trustee and the families,  
15 to object to improper employment or compensation obligations  
16 or bargain away the Court's independent obligations to  
17 review them.

18 Third, the motion requests payments of these  
19 professionals under an incorrect legal standard because  
20 according to the parties 9019 doesn't displace the legal  
21 requirements that a professional must seek to be retained  
22 and compensated under Bankruptcy Code Sections 327, 330, and  
23 503, and there's no exception under the Bankruptcy Code for  
24 unretained professionals.

25 So after considering the evidence and applicable

1 law and the arguments today, I'm going to overrule the  
2 objections and I'm going to approve the settlement, and I'm  
3 going to provide my reasons.

4 Bankruptcy Rule 9019 governs the requirement to be  
5 followed before a settlement can be approved. It provides  
6 that on motion and after notice and hearing, the court may  
7 approve a compromise in a settlement. That's just the  
8 general rule, right, so in deciding whether a settlement of  
9 litigation is fair and equitable, a judge in bankruptcy must  
10 make a well informed decision comparing the terms of the  
11 compromise with the likely rewards. That's coming from In  
12 re: Cajun Electric Power Corp, 119 F.3d 349, 356 (5th Cir.  
13 1997).

14 The standard of approval of a Bankruptcy Rule 9019  
15 settlement is whether the proposed settlement is fair,  
16 equitable, in the best interests of the estate, right? That  
17 comes from the In re: Age Ref. Inc., 801 F.3d 530 (5th Cir.  
18 2015) case.

19 In determining whether a settlement is fair and  
20 equitable, the Fifth Circuit applies a three part test that  
21 considers the probability of success in litigating the  
22 claim, subject to the settlement and due consideration for  
23 the uncertainty in fact in law: the complexity and likely  
24 duration of any attendant expenses -- excuse me, the  
25 complexity and likely duration of litigation and any

1 attendant expense; the inconvenience and delay, "and all  
2 other factors bearing on the wisdom in compromise, including  
3 the best interests of the creditors with proper deference to  
4 their reasonable views; and two, to the extent to which the  
5 settlement is truly the product of arm's length bargaining  
6 and no fraud or collusion."

7 I turn to the first factor. In the admin expense  
8 motions, Shannon & Lee and Schwartz and Associates seek as  
9 part of their request retroactive approval of their  
10 employment on a limited basis and if the Court denies that  
11 retroactive approval, they seek approval of an admin  
12 expenses for services rendered on behalf of the Debtor, work  
13 that they believe benefited the estate.

14 The U.S. Trustee's first objection focuses on the  
15 appeals. Doesn't believe I have jurisdiction over the  
16 matter subject of the appeals and the families and the  
17 Trustee are right about that. This Court makes no  
18 statements justifying its decisions or whatsoever denying  
19 the retention applications or denying the motion for  
20 reconsideration. I stand by every word I said in those and  
21 I said it before and I already said that on the record.

22 I'm not trying to settle the appeals, nor do I  
23 make any statements about retroactive approval and whether  
24 that would even be appropriate about the retention  
25 applications, none of it. But the U.S. Trustee and the



1 families are wrong that the Court doesn't have authority or  
2 jurisdiction to approve the settlement. What's the  
3 settlement really about, right?

4 It's about alleged claims to compensation and the  
5 Debtor's potential claims against the professionals, right,  
6 including turnover, potential fraudulent transfer actions  
7 related to the retainer. That's what this is really about.  
8 The appeals won't resolve the questions about whether  
9 professionals are entitled to any compensation, and if so,  
10 how much or if they have to return all or a portion of their  
11 retainer.

12 This Court can settle claims against the estate  
13 and potential claims held by the estate. By settling the  
14 claims, the firms have indicated they don't want to pursue  
15 their appeals, but that's their right. The Court's orders  
16 and the legal reasoning undergirding their appeals matters  
17 that would remain in effect, their applications would remain  
18 denied. The Court isn't robbing the U.S. Trustee of any  
19 right to object to the admin motions. They've already done  
20 that and it's not object -- not robbing the U.S. Trustee or  
21 the families of any matters related to the appeals.

22 I have no jurisdiction over that. I have no idea  
23 what's going on in those appeals. If parties are going to  
24 file objections and take part in the appeals, they have the  
25 right to do so. If those parties want to withdraw their

1 appeal, that's got nothing to do with me.

2           These professionals are not retained and the  
3 proposed settlement won't change that. And these firms are  
4 going to have to live with that, live with denied  
5 applications. But if the Debtor wants to settle potential  
6 (indiscernible) climbs for 15 percent or 20 percent of the  
7 face value of the climb, this Court has the absolute  
8 jurisdiction and authority under federal law to settle  
9 causes of action, right, including under 28 U.S.C.  
10 157(b) (2) (C), (E), and (F) and Section 105 of the Bankruptcy  
11 Code.

12           Looking at the complexity of the case and the  
13 attendant expenses, and I would note that I consider here  
14 the unopposed and who I find very credible testimony by Mr.  
15 Magill. And I would note that you know, regardless of how  
16 the appeals were to turn out -- and again, there's no  
17 question that these Debtors are not going to continue to  
18 serve. Mr. Battaglia serves as Debtors' counsel. Mr.  
19 Magill is the new CRO. They're not getting replaced in  
20 these cases, no matter what would happen in the appeals.

21           And again, Mr. Magill who came on after everything  
22 happened is telling me that he believes it's in the best  
23 interest of the Debtor and of the estate to settle these  
24 matters. So continuing to mitigate the administrative  
25 expense motions is going to result in additional expenses to

1 the Debtor's estate that the Debtors has determined further  
2 supports the settlement being the superior outcome. The  
3 Debtor is exercising its business judgment based on the  
4 facts before it and at this stage of the case, right?

5 The U.S. Trustee already noted, this case is  
6 almost a year into a Subchapter V case. The attendant time  
7 required on the issue will no doubt be substantial and  
8 dealing with this issue is a distraction at a time when the  
9 Debtor is in mediation, has a plan on file, and must decide,  
10 given next steps, given the Subchapter V Trustee's report  
11 highlighting matters that will require significant time and  
12 resources, in this Court's opinion, the amount of money  
13 expended and the administrative expense motions makes the  
14 potential recovery of the retainers to be -- firms to be  
15 paid insignificant.

16 The U.S. Trustee, you know, focuses on the fact  
17 that the firms were not retained and therefore not entitled  
18 to compensation under Section 330 in the Bankruptcy Code.  
19 Parties have the right to object to such fees. That's true.  
20 The U.S. Trustee is absolutely right about that. Trustee's  
21 also right that fees approved under Section 330 are entitled  
22 to administrative priority under the Section 503(b)(2) of  
23 the Bankruptcy Code.

24 But their admin motions also seek approval of  
25 fees, among other things, Section 503(b)(1)(A). Is a non-

1 retained professional permitted compensation under Section  
2 503(b) (1) (A)? If a professional, you know, incurred  
3 expenses on behalf of the estate, no question they were paid  
4 for on behalf of the estate post-petition if the Debtor  
5 completed schedules for a Debtor and did a good job, is  
6 there room under Section 503(b) (1) (A) to -- later finds a  
7 conflict; you know, is there room under Section 503(b) (1) (A)  
8 to compensate for the non-conflicted work?

9 Fifth Circuit hasn't opined on this issue in this  
10 situation that Shannon & Lee and Schwartz and Associates  
11 find themselves in, neither has this Court. U.S. Trustee  
12 wants the opportunity to object to the admin expense  
13 motions. Settlement resolves all legal -- all the legal  
14 dispute for the admin which is about for about 18 percent in  
15 the aggregate. The Debtor's CRO who replaced Schwartz is an  
16 independent party and determined it's best to settle. I  
17 find that the CRO thoroughly considered the interest of the  
18 estate and its creditors and concluded that the settlement  
19 was in the best course. That makes sense.

20 As to the issues that I raised on the legal issue,  
21 I hope to never address the issue because it means that a  
22 professional retention application has been denied. The  
23 lesson is for professionals to place a premium on disclosure  
24 and transparency and never find themselves in this  
25 situation. I want to leave no confusion about one point and

1 I think Mr. Nguyen raised the issue about future  
2 considerations. You know, what would this Court's order do?

3 Anyone who sees approval of this settlement as a  
4 potential road map for future professionals whose retention  
5 applications are denied is mistaken and hasn't really  
6 thought through this issue. Any perceived holdup value or  
7 consideration that by keeping litigation open a party can  
8 drive towards a settlement is meritless to me and I took no  
9 consideration of that in connection with today. I don't  
10 care about or consider appellate time or a litigation holdup  
11 value today.

12 These professionals are going to have to live with  
13 denied applications and they're going to seek and be  
14 permitted to keep a fraction of what they bill, not even  
15 thinking about what they could have billed. Doesn't even  
16 factor what a firm like Schwartz and Associates has lost in  
17 time and having to hire a separate counsel in this case.  
18 You add -- I'm sure, this isn't a sweetheart deal for any of  
19 the professionals.

20 This is however a sound exercise of the Debtor's  
21 business judgment to settle. I don't think anyone sees  
22 keeping, you know, someone that's billed to date, you know,  
23 over \$300,000, close to \$400,000, and then has to fight for  
24 an admin motion, fight -- to fight legal argument in this  
25 bankruptcy case. I don't care about the appeals. Just

1 admin motions in here, arguing for retention, sees that as a  
2 sweetheart deal, you get to keep 15 percent of what you  
3 billed and you don't even -- you're not even counsel  
4 anymore. That's not a sweetheart deal that's going on here.  
5 I don't think anybody sees this as some potential road map  
6 or a sweetheart deal or smart decision in future that  
7 there's going to be some backhanded handshake.

8 And there will be debtors at a particular  
9 different kind of a case -- every 9019 motion is taken up on  
10 the facts at the time and for the reasons they are  
11 considered. And maybe a Debtor who objects to all of this,  
12 and I'll have to take up those issues and I'll deal with  
13 them. Maybe sometimes there are no settlements and parties  
14 are going to have to go take that up.

15 I think anyone who thinks that debtors are going  
16 to respond in a certain way and, you know, what the Court  
17 may or may not do, these cases are in unique circumstances  
18 at a -- as a Subchapter V case and I'm hearing from a new  
19 independent CRO, a lot of factors that go into the Court's  
20 decisions today and this is not -- this case is anything but  
21 run of the mill.

22 I rely heavily -- you know, you have two lawyers  
23 involved, you know, one was co-counsel to the Debtor and was  
24 able to pick up. There's a lot of things that go into this,  
25 where the case says at this stage. The United States

1 Trustee just stood up and said this is a case that's been  
2 going on for a year, Your Honor, we've got to start making  
3 resolution. That's what Mr. Magill is saying. Time to move  
4 on from certain things and he's made an assessment that  
5 solving this, solving dueling claims and potential dueling  
6 claims, potential fraudulent transfer actions, potential  
7 turnover actions and the cost attendant to that, none of  
8 that is going to be resolved regardless of what happens  
9 upstairs.

10 Court affords great right to determination by the  
11 CRO. So when I think about the wisdom of the compromise, I  
12 think about what Mr. Magill has done here. It's in the best  
13 interest of creditors. I know that there's some creditors  
14 object, and I certainly take the families' considerations  
15 here, but I do find -- and I do find it's in the best  
16 interest of the estate and its creditors. The settlement  
17 was negotiated at arm's length. The Subchapter V Trustee  
18 was involved here as well.

19 Each party was represented by sophisticated  
20 counsel or are themselves attorneys, right. (indiscernible)  
21 business judgment. The Subchapter V Trustee involvement in  
22 the negotiations that resulted in the proposed settlement  
23 show that the arm's length nature of these issues. It's not  
24 -- doesn't contravene the Bankruptcy Code to settle claims.  
25 And there is a better off principle of paying claims and I

1 don't think there are any winners today, but I do think it's  
2 important. The estate is telling me that it wants to move  
3 on from this. It can.

4 And so I'm going to approve the settlement, but  
5 I'm not ordering Shannon & Lee to withdraw the objection to  
6 -- in the appeals, all right. I'm going to approve a  
7 settlement where they get to keep the retainers. That's  
8 their deal and I don't know what that does to the appeals,  
9 but whatever it does, it does and parties can go upstairs  
10 and argue.

11 I'm settling a claim. Both can go upstairs and  
12 explain to the District Court that I have settled dueling  
13 claims with the admin claim and potential turnover retainer.  
14 That's what I'm settling. That's what this is really about.  
15 This isn't about future fees or limited retainers --  
16 retentions for future claims. I don't know about any of  
17 that, but I hope this allows the Debtor to put one thing  
18 behind it.

19 I want hearings set on other issues. Mr. Magill,  
20 I think you heard me loud and clear about setting up a time  
21 where we can talk, Mr. Battaglia, about where this case  
22 goes. I take to heart what the United States Trustee said  
23 about, you know, this case has been going on for a while.  
24 The parties have been in mediation and I don't like getting  
25 in the way and telling people to get out of mediation or in



1 it, but -- maybe we can talk in a couple of weeks about kind  
2 of where things are and I don't want to reveal mediation  
3 confidences.

4 I have no idea what's going on there, but I do  
5 know that I have a Subchapter V Trustee report that I  
6 extended. I authorized the Trustee, I expanded her powers,  
7 to be able to do it and there's some things in there that I  
8 think we need to talk about. That's where we are. So I  
9 think for all those reasons, I'll just enter a short order  
10 authorizing -- I'm deleting the paragraph about directing  
11 parties what to do upon final -- that's not before me and I  
12 don't want to get in the way of a settlement.

13 But again, I -- look, I think it's important what  
14 the United States Trustee raised and the families raised and  
15 I very much appreciate their arguments today. It just tells  
16 me that the process is working that the Subchapter V Trustee  
17 is involved, the United States Trustee is involved. You got  
18 the families involved. You got the Debtors involved.  
19 You've got professionals involved. That is exactly what is  
20 supposed to happen to allow the process to continue.

21 So I will sign that order with that one paragraph  
22 deleted and I'll get it entered today. I very much  
23 appreciate everyone's involvement today.

24 MR. BATTAGLIA: Your Honor, I appreciate the  
25 Court's not wanting order regarding an appeal, but it

1 remains the agreement of the parties, so --

2 THE COURT: I'm just saying, I'm not ordering.

3 MR. BATTAGLIA: Understood.

4 THE COURT: I'm not telling the parties what to do  
5 upstairs. They can -- they'll do what they'll do. I  
6 understand -- okay. Anything else we need to talk about  
7 today?

8 MR. BATTAGLIA: I guess I'll circulate an email  
9 and see if there's a time, maybe second week of May.

10 THE COURT: Yeah, the first week of May is --

11 MR. BATTAGLIA: To come back and address --

12 THE COURT: -- not good for me. Yeah, just come  
13 back and let's just set a, I don't know, maybe an hour, hour  
14 and 15 minutes or something, just to kind of talk about it.  
15 And if there's something that comes up in the Jones case  
16 that maybe -- I don't know, I'm just using it -- maybe we  
17 can use it as an omnibus day. Just give it some thought and  
18 figure it out. I don't -- I haven't checked the docket. I  
19 mean --

20 MR. BATTAGLIA: I think --

21 THE COURT: Well, I've been seeing the back and  
22 forth between the Committee and the Debtors. I've been  
23 reading everything. I just don't know if there's something  
24 that is ripe for adjudication in that, but maybe we can all  
25 think about it.

1 MR. BATTAGLIA: Just look for a status conference  
2 day for an hour or so in the second week of May and we can  
3 address the notice that --

4 THE COURT: Yeah, why don't we make it a joint  
5 status conference because Jones is involved in the  
6 mediation.

7 MR. BATTAGLIA: Both cases, yes.

8 THE COURT: So that'll make a lot of sense.

9 MR. BATTAGLIA: Yes, sir.

10 MS. DRIVER: Your Honor, this is just a --

11 MAN: Your Honor?

12 MS. DRIVER: -- cleanup matter.

13 THE COURT: Just a second.

14 MS. DRIVER: Oh --

15 THE COURT: Go ahead.

16 MS. DRIVER: This is just a small cleanup matter.  
17 The -- each of the Texas plaintiffs and the Connecticut  
18 plaintiff groups have filed non-dischargeability options in  
19 the Jones case. They've extended the professional courtesy  
20 of allowing us an extra week to file our answers, otherwise  
21 they would be due today. So Your Honor, my litigators were  
22 a little antsy to see if it was -- if Your Honor would  
23 possibly take a look at our unopposed motion for that one  
24 week and think about entering those orders, if at all  
25 possible.

1 THE COURT: There's no disagreement. I'll take  
2 it. And I did see that the Fifth Circuit took the Judge  
3 Gargotta's decision on direct appeal. So we will see where  
4 that goes. I -- just noting that for the record. So that I  
5 know that was part of one of the stipulations that if the  
6 Fifth Circuit took it -- I just, I'm saying it for the  
7 public.

8 MR. BATTAGLIA: With the Free Speech case.

9 MS. DRIVER: Yeah. We don't see it having a lot  
10 of applicability for Mr. Jones.

11 THE COURT: No, no, no, no. I'm just talking  
12 about the Free Speech case, just, that I know that was one  
13 thing I just want the parties to note for the record. So I  
14 will take a look at that.

15 MS. DRIVER: Thank you, Your Honor. We appreciate  
16 that.

17 THE COURT: Let me just make sure I'm looking at  
18 the right thing. Is it in the -- is it in the Jones  
19 adversary?

20 MS. DRIVER: There's one that's 23-3035 and that's  
21 the proposed -- the motion was Docket No. 20 and the  
22 proposed order is 21.

23 THE COURT: Okay.

24 MS. DRIVER: And then in the 3037 matter, the  
25 motion was Docket No. 48 with the proposed order following

1 at 49.

2 THE COURT: Okay. I'll get them signed and on the  
3 docket shortly today.

4 MS. DRIVER: Thank you, Your Honor.

5 THE COURT: Give everyone some comfort. Okay.  
6 It's okay. I'm just going to sit here and sign these  
7 orders. So when I tell people that it's really on the  
8 docket, I can really mean it. Is there anything else we  
9 need to talk about today, any scheduling, any other issues  
10 that we need to talk about?

11 MR. BATTAGLIA: -- Free Speech side, Your Honor.

12 THE COURT: Okay. Anything else from anyone else?  
13 Okay. Everyone, thank you very much. I'm just  
14 going to sit here. Everyone's excused. I'm just going to  
15 sign these two orders, make sure that --

16 MR. BATTAGLIA: Thank you, Your Honor.

17 (Whereupon these proceedings were concluded at  
18 2:19 PM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: May 2, 2023